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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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8 FEDERAL TRADE COMMISSION,
9 STATE OF NEW YORK, STATE OF
10 CONNECTICUT, COMMONWEALTH OF
11 PENNSYLVANIA, STATE OF DELAWARE,
12 STATE OF MAINE, STATE OF MARYLAND,
13 COMMONWEALTH OF MASSACHUSETTS,
14 STATE OF MICHIGAN, STATE OF
15 MINNESOTA, STATE OF NEVADA, STATE
16 OF NEW HAMPSHIRE, STATE OF NEW
17 JERSEY, STATE OF NEW MEXICO, STATE
18 OF OKLAHOMA, STATE OF OREGON,
19 STATE OF RHODE ISLAND, and STATE OF
20 WISCONSIN,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO.: 2:23-cv-01495

**NOTICE OF PENDENCY OF
OTHER ACTIONS IN ANOTHER
JURISDICTION**

Pursuant to Local Civil Rule 3(h), Plaintiffs Federal Trade Commission (“FTC”) and the states of New York, Connecticut, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, and Wisconsin provide notice of the pendency of the following cases: *District of Columbia v. Amazon.com, Inc.*, No. 2021 CA 001775 B (D.C. Super. Ct.) (the “D.C. Action”);

NOTICE OF PENDENCY
OF OTHER ACTIONS - 1
CASE NO. 2:23-CV-01495

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580
202-326-2222

1 *People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.) (the
 2 “California Action”); and *Mbadiwe v. Amazon.com, Inc.*, No. 1:22-cv-09542 (S.D.N.Y.)
 3 (“*Mbadiwe*”) (collectively with the D.C. Action and the California Action, the “Other Actions”).
 4 Because the Other Actions arise solely under state law¹ and are each significantly narrower than
 5 Plaintiffs’ action here, Plaintiffs do not believe that coordination between the actions is likely to
 6 “avoid conflicts, conserve resources, [or] promote an efficient determination of this action,”
 7 Local Rules W.D. Wash. LCR 3(h). As such, Plaintiffs do not believe any formal coordination
 8 between this case and the Other Actions is warranted.

9 The D.C. Action is an enforcement action by the Attorney General of the District of
 10 Columbia against Amazon for violations of the District of Columbia Antitrust Act, D.C. Code
 11 §§ 28-4501, *et seq.* The D.C. Action is a state action arising solely under state law and is not
 12 subject to a transfer of venue within the federal court system. The D.C. Action alleges that
 13 Amazon restrains third-party sellers from selling their products on any other online retail store at
 14 prices lower than they offer on Amazon, and that this conduct causes prices for consumers across
 15 online retail to be higher than they would otherwise be. Similar to the D.C. Action, Plaintiffs
 16 allege that Amazon stifles price competition by punishing sellers who offer lower prices off
 17 Amazon. *See, e.g.*, Compl., Dkt. #1 at 83-87. However, Plaintiffs here also challenge several
 18 other facets of Amazon’s conduct under federal and state laws that are not at issue in the D.C.
 19 Action. In the D.C. Action, the court granted Amazon’s motion to dismiss on March 18, 2022,
 20 and then denied the District’s request for reconsideration on August 1, 2022. The District’s
 21 appeal is currently pending in the D.C. Court of Appeals and Plaintiffs are unaware of any
 22

23 ¹ For simplicity, Plaintiffs refer to the laws of the District of Columbia and the laws of various states implicated in
 24 the Other Actions as “state” laws or actions.

1 ongoing discovery in the D.C. Action. Given the differences between this case and the D.C.
 2 Action, Plaintiffs do not believe that coordination between the actions is likely to “avoid
 3 conflicts, conserve resources, [or] promote an efficient determination of this action.” LCR 3(h).

4 The California Action is an enforcement action by the Attorney General of California
 5 against Amazon for violations of California’s Cartwright Act, Bus. & Prof. Code § 16720, *et*
 6 *seq.*, and the unlawful and unfair prongs of California’s Unfair Competition Law, Bus. & Prof.
 7 Code § 17200, *et seq.* The California Action is a state action arising solely under state law and is
 8 not subject to a transfer of venue to the federal court system. The California Action alleges that
 9 Amazon requires all third-party sellers who sell products on the Amazon platform, and wholesale
 10 suppliers who supply Amazon with the products it sells directly, to enter into express and *de*
 11 *facto* price parity agreements under which the sellers and suppliers agree not to charge or allow
 12 lower prices to be offered for their products on any other online retail platform. The California
 13 Action further alleges that these anticompetitive agreements cause harm to competitors, third-
 14 party sellers, wholesale suppliers, and consumers. Similar to the California Action, Plaintiffs
 15 allege that Amazon stifles price competition by punishing sellers who offer lower prices off
 16 Amazon. *See, e.g.*, Compl., Dkt. #1 at 83-87. However, Plaintiffs here also challenge several
 17 other facets of Amazon’s conduct under federal and state laws that are not at issue in the
 18 California Action. Given the differences between this case and the California Action, Plaintiffs
 19 do not believe that coordination between the actions is likely to “avoid conflicts, conserve
 20 resources, [or] promote an efficient determination of this action.” LCR 3(h).

21 *Mbadiwe* is a putative class action brought on behalf of consumers from various states
 22 who “paid supra-competitive prices for products sold on e-commerce platforms other than
 23 Amazon because of an agreement or business combination that each of the third-party sellers
 24 were required to enter into with Amazon in order to sell their products on Amazon.” First

1 Amended Class Action Complaint, *Mbadiwe v. Amazon.com, Inc.*, No. 1:22-cv-09542 (S.D.N.Y.
 2 Jan. 20, 2023), Dkt. #24 at 1. The *Mbadiwe* plaintiffs do not allege any federal antitrust law
 3 violations, do not seek injunctive relief, and assert claims based on antitrust and consumer
 4 protection laws of 29 states. The *Mbadiwe* plaintiffs also limit their allegations concerning
 5 anticompetitive conduct by Amazon to the time period before March 2019, when Amazon
 6 allegedly removed the challenged “Price Parity Restriction” from its agreements in the United
 7 States with third-party sellers. *Id.* at 8, 34-36. Plaintiffs here seek injunctive relief and allege
 8 that Amazon stifles price competition by punishing sellers who offer lower prices off Amazon,
 9 but do not limit their allegations to the specific contractual restrictions at issue in *Mbadiwe*.
 10 Plaintiffs also challenge several other facets of Amazon’s conduct federal laws that are not at
 11 issue in *Mbadiwe*. Given the differences between this case and *Mbadiwe*, Plaintiffs do not
 12 believe that coordination between the actions is likely to “avoid conflicts, conserve resources,
 13 [or] promote an efficient determination of this action.” LCR 3(h).

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15 Dated: September 26, 2023

Respectfully submitted,

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s/ Susan A. Musser

17 SUSAN A. MUSSER (DC Bar # 1531486)

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1 *Attorneys for Plaintiff*
2 *Federal Trade Commission*
3 I certify that this memorandum contains
4 912 words, in compliance with the Local Civil
5 Rules.

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CERTIFICATE OF SERVICE

I, Susan A. Musser, certify that on September 26, 2023, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system. Additionally, today I effectuated service of the same by email on Kevin M. Hodges, counsel for the Defendant. I understand that Defendant's counsel has consented to service in this manner. A copy of this Motion will also be personally delivered today to Kevin Hodges, counsel for Defendant, at Williams & Connolly LLP, 680 Maine Ave SW, Washington, DC 20024.

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